Remarks

This Application has been carefully reviewed in light of the Final Office Action dated May 20, 2009. Although Applicants believe all claims are allowable without amendment, to advance prosecution Applicants have made clarifying amendments to Claims 1, 6, 11, 14, 18, 20-21, and 26. At least certain of these amendments are not considered narrowing or necessary for patentability. Applicants respectfully request reconsideration and allowance of all pending claims.

I. Request for Interview

At the outset, Applicants note that they would welcome the opportunity to discuss this Application with the Examiner. In the event the Examiner determines that a next Office Action should be issued rather than the more appropriate Notice of Allowance, Applicants respectfully invite the Examiner to telephone Applicants' undersigned representative to discuss the Application, in light of the arguments and amendments presented herein, prior to issuing the next Office Action.

II. The Claim Objections should be Withdrawn

The Examiner objects to Claims 20-21 and 26 due to informalities. Claims 20-21 and 26 are amended in accordance with the Examiner's suggestion. For at least these reasons, Applicants respectfully request the Examiner to withdraw the objections.

III. The Claims are Allowable over the Proposed *Jouppi-Lundin* Combination

The Examiner rejects Claims 1, 3-6, 8-11, 13-14, 16-18, and 20-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publ. No. 2003/0221016 A1 by Jouppi et al. ("*Jouppi*") in view of U.S. Patent Application Publ. No. 2008/0096523 by Lundin et al. ("*Lundin*"). Applicants respectfully traverse these rejections and discuss independent Claim 1 as an example.

A. The Proposed *Jouppi-Lundin* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Claim 1

The cited portions of the proposed *Jouppi-Lundin* combination do not appear to disclose, teach, or suggest various limitations recited in Claim 1, as amended.

For example, the cited portions of the proposed *Jouppi-Lundin* combination do not appear to disclose, teach, or suggest a GGSN that is operable to "communicate traffic pattern information associated with the primary and secondary PDP links to a client services packet gateway (CSPG) **through one or more control path interfaces of the GGSN to the CSPG by adding the traffic pattern information into traffic flows communicated through the one or more control path interfaces of the GGSN to the CSPG, the CSPG being external to and upstream from the GGSN**," as recited in Claim 1 as amended.

The Examiner apparently acknowledges that *Jouppi* fails to disclose the limitation "**by adding the traffic pattern information into traffic flows communicated through the one or more control path interfaces of the GGSN to the CSPG**," as recited in Claim 1. However, the Examiner argues that *Lundin* discloses these limitations, citing *Lundin* at page 2, paragraph 28; page 3, paragraphs 41 and 43-44; and Figures 4 and 6. *Final Office Action* at 10. Page 2, paragraph 28 of *Lundin* discloses that GGSN 1A communicates with SGSN 2A over the Gn-interface using the GTP, and that GGSN 1A here adds traffic type information to the GTP header of the downlink payload. Page 3, paragraph 41 of *Lundin* discloses that in Figure 4 "sending of type info (e.g., service class tag and possibly cost/rating info and/or chain id) between GGSN 1D and SGSN 2D is not necessary." In contrast, Claim 1 recites the limitation "by adding the traffic pattern information into traffic flows communicated **through the one or more control path interfaces of the GGSN to the CSPG.**" To the extent that the cited information can even be equated to the traffic pattern information recited in Claim 1 (and Applicants make no concession that it can), *Lundin* merely discloses communicating such information **to the SGSN from the GGSN** in the particular embodiment illustrated in Figures 1-3 of *Lundin,* not to any CSPG.

The Examiner also cites page 3, paragraphs 43-44 and Figures 4 and 6 of *Lundin* as allegedly disclosing these limitations. *Final Office Action* at 10. The Examiner asserts that the SGSN has charging functionality, stating that the SGSN of *Lundin* acts as a CSPG. *Id.* at 13. Applicants respectfully submit that this attempted equation of the SGSN to the CSPG is inconsistent with the Examiner's earlier equations based on *Jouppi* in which the Examiner relied on the CGF of *Jouppi* as allegedly disclosing the CSPG of Claim 1. In other words, as allegedly disclosing the CSPG for other limitations in Claim 1, the Examiner relied on the CGF of *Jouppi*. Now, in attempting to make up for the acknowledged deficiencies of *Jouppi*, the Examiner has changed the component the Examiner is equating to the claimed CSPG to the SGSN disclosed in *Jouppi*. An SGSN and a CGF are different components. However, the recitations in Claim 1 of the CSPG refer to the same CSPG. Applicants respectfully submit that it is improper for the Examiner to pick and choose disjointed portions of different references in this manner, substituting one component for another, when attempting to map a combination of references to Applicants' claims. This attempted substitution of components is made even more inappropriate given that *Jouppi* already discloses an SGSN, which cannot be equated to (and which the Examiner does not attempt to equate to) the claimed CSPG (nor is the SGSN of *Jouppi* the same as the CGF of *Jouppi*). Neither the cited portions of *Jouppi* nor the cited portions of *Lundin*, whether considered alone or in combination, disclose, teach, or suggest the particular combination of limitations recited in Claim 1.

In responding to Applicants' arguments from the Previous Response related to the above issues, it appears that the Examiner simply reiterated that the CGF of *Jouppi* could simply be substituted with the SGSN of *Lundin* in attempting to reconstruct Applicants' claims. First, Applicants reiterate that it is improper for the Examiner to pick and choose disjointed portions of different references in this manner, substituting one component for another, when attempting to map a combination of references to Applicants' claims. Second, although Applicants believe this distinction is clear in the claims as currently written, to make it even more clear that the SGSN of *Lundin* cannot be equated to the claimed CSPG (and therefore that the alleged addition of traffic type information into a GTP header of a downlink payload in *Lundin* cannot be equated to the claimed communication of traffic pattern information through one or more control path interfaces of the GGSN to the CSPG by adding the traffic pattern information into traffic flows communicated through the one or more control path interfaces of the GGSN to the CSPG), Applicants have amended Claim 1 to recite that the CSPG is upstream from the GGSN. The GGSN of *Lundin*, when communicating the cited traffic type information to the SGSN, is plainly communicating such information in the downstream direction, as the Examiner apparently acknowledges. *See Final Office Action* at 13; *Lundin* at Figures 1-3. Figure 4 of *Lundin*, which according to the Examiner shows the SGSN providing a charging functionality, does not even show the cited "traffic type information" being communicated from the GGSN to the SGSN. Indeed, the description associated with Figure 4 of *Lundin* states that "the sending of type info (e.g. service class tag and possibly cost/rating info and/or chain id) between the GGSN 1D and SGSN 2D is not necessary. *See Lundin*, ¶0041.

The Examiner's citations to other embodiments in *Lundin* in which the traffic type information is communicated to the SGSN are embodiments in which the GGSN is providing a charging function (if a charging function is even mentioned). However, those embodiments are not relevant to the cited embodiment in Figure 4 of *Lundin* and do not disclose the limitations recited in Claim 1 at least because the GGSN would not be communicating the traffic type information to the external component that the Examiner is purportedly equating to the CSPG (i.e., the external component being whatever is providing a charging function, according to the Examiner).

As another example, the Examiner cites page 2, paragraph 28 and page 3, paragraph 41 of *Lundin* as allegedly disclosing "the traffic pattern information specifying a first quality of service level for the primary PDP link and a different second quality of service level for the secondary PDP link," as recited in Claim 1. *Final Office Action* at 10. As discussed above, Claim 1 recites that the **GGSN** is operable to **communicate the traffic pattern information** (specifying a first quality of service level for the primary PDP link and a different second quality of service level for the secondary PDP link) **to a CSPG**. This is not disclosed in the cited portions of *Lundin*. Rather, as discussed above, to the extent that the cited traffic type information in *Lundin* can even be equated to the traffic pattern information recited in Claim 1 (and Applicants make no concession that it can), *Lundin* merely discloses communicating such information **to the SGSN** in the particular embodiment illustrated in Figures 1-3 of *Lundin*, **not to any CSPG**. Moreover, as discussed above, Applicants reiterate that it would be inappropriate for the Examiner simply to substitute the SGSN of *Lundin* for the CGF of *Jouppi* where convenient for particular claim limitations.

Furthermore, **it does not appear that the "traffic type information" of *Lundin*** that the Examiner apparently equates to the "the traffic pattern information specifying a first quality of service level for the primary PDP link and a different second quality of service level for the secondary PDP link," as recited in Claim 1, **specifies a first quality of service level for the primary PDP link and a different second quality of service level for the secondary PDP**. Thus, the cited portions of *Lundin* do not even disclose the claimed "traffic pattern information," let alone communicating such information in the manner recited in Claim 1.

As yet another example, the proposed *Jouppi-Lundin* combination does not appear to disclose, teach, or suggest the communicated traffic pattern information "allowing the CSPG to provide at least one service according to one or more appropriate quality of service levels determined from the traffic pattern information, **the CSPG operable to parse the traffic pattern information to determine the first quality of service level for the traffic flows propagating via the primary PDP link and the second quality of service level for the traffic flows propagating via the secondary PDP link**," as recited in Claim 1 as amended.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claim 1 and its dependent claims. For at least certain analogous reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 6, 11, 14, and 18 and their dependent claims.

B. The Proposed *Jouppi-Lundin* Combination is Improper

In addition, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness based on the proposed *Jouppi-Lundin* combination because the Examiner has not provided an adequate reason for combining or modifying the references in the manner proposed by the Examiner. Claim 1 is allowable for at least this additional reason.

As allegedly providing a reason that the combination would have been obvious to one of ordinary skill in the art at the time of Applicants' invention, the Examiner states the following:

> It would have been obvious for one of ordinary skill in the art at the time of the invention, when presented with the work of Lundin et al., to combine referencing traffic pattern information to provide different quality of service levels for different PDP links such that differentiated billing occurs based on the different quality of service levels, as suggested by Lundin et al., with the system and method of Jouppi et al., with the motivation being to allow more flexible billing of customers.

Final Office Action at 11.

Applicants again respectfully submit that the Examiner's alleged explanation for the combination amounts to the following: It would have been obvious to modify *Jouppi* to include *X* (as allegedly disclosed in *Lundin*) because then *Jouppi* would include *X*. This apparent circular reasoning certainly does not satisfy the stringent standards for establishing a *prima facie* case of obviousness. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385, 1396 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The Examiner has simply not presented an adequate "articulated reasoning with some rational underpinning" that it would have been obvious to make the proposed combination.

The Examiner's apparent response to these arguments does not resolve the inappropriateness of the combination. *See Final Office Action* at 14. As just one example, as discussed above, in attempting to swap the CGF of *Jouppi* with the SGSN of *Lundin*, the Examiner not only changes the component that the Examiner is attempting to equate to the claimed CSPG, but does not explain why one of ordinary skill in the art at the time of Applicants' invention would have replaced the CGF of *Jouppi* with the SGSN of *Lundin*, particularly when the system in *Jouppi* already includes an SGSN that is distinct from *Jouppi*'s CGF.

Thus, Applicants respectfully submit that the Examiner's attempt to combine these references appears to constitute the type of impermissible hindsight reconstruction of Applicants' claims, using Applicants' claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

For at least these additional reasons, Applicants respectfully request reconsideration and allowance of independent Claim 1 and its dependent claims. For at least certain analogous reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 6, 11, 14, and 18 and their dependent claims.

III. **No Waiver**

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner's rejections.

Conclusion

Applicants have made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicants, at the Examiner's convenience at (214) 953-6813.

As indicated on the accompanying RCE Transmittal form, the Commissioner is hereby authorized to charge the amount of $810.00 to Deposit Account No. 02-0384 of Baker Botts L.L.P. to cover the cost of the RCE fee. Additionally, as indicated on the accompanying Request for Extension of Time, the Commissioner is hereby authorized to charge the amount of $1,110.00 to Deposit Account No. 02-0384 of Baker Botts L.L.P. to cover the fee for a three-month extension of time. Although Applicant believes no other fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

Chad D. Terrell
Reg. No. 52,279

Date: November 19, 2009

Correspondence Address:

Customer No. **05073**